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HD **Supreme Court makes it tougher for police to search homes; All nine Supreme Court judges said the protection against search and seizure in the Charter of Rights and Freedoms demands a stricter standard than the existing one for searches connected to an arrest, under the common law**
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The Supreme Court has made it harder for police to search a home when they enter in urgent circumstances to make an arrest. But four of the nine judges would have expanded privacy rights even further and made it more difficult still.

The ruling was made in connection with a suspected domestic violence case, when officers arresting a man in a basement for assault looked behind a couch and found methamphetamine. The question for the court was whether the search, which led to a trafficking charge, was legal.

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The case of Matthew Stairs of Oakville, Ont., required the country's highest court to consider the balance of privacy in the home, particularly when police have not obtained a warrant to enter, against public safety.

All nine judges said the protection against search and seizure in the Charter of Rights and Freedoms demands a stricter standard than the existing one for searches connected to an arrest, under the common law (a body of precedents). That standard was whether the police acted reasonably in the circumstances. The new standard, endorsed by five judges, is whether police had a reasonable suspicion of a safety risk to anyone near where the arrest took place. Four judges said the risk of harm should have to be imminent.

Mr. Stairs was convicted of methamphetamine trafficking at trial, after a judge ruled the search to be legal. The Ontario Court of Appeal upheld the conviction 2-1. The dissenting judge, Justice Ian Nordheimer, said that while the entry to the house was legal because of urgent circumstances, and the arrest was legal, the search was not. He proposed a higher standard, that of "reasonable necessity," such as a reason to believe the suspect possessed a gun.

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The Supreme Court upheld the conviction 6-3, saying the search was legal even under the new standard. The three dissenters – Justice Andromache Karakatsanis, Justice Russell Brown and Justice Sheilah Martin – would have excluded the evidence, saying it was illegally obtained, and using it would bring the justice system into disrepute. A fourth judge, Justice Suzanne Côté, said the evidence was illegally obtained, but could be used because the law was uncertain at the time of the arrest. Next time, the evidence would be excluded.

The majority said police have a responsibility for safety that must be respected. Judges must be “alive to the volatility and uncertainty that police officers face – the police must expect the unexpected.” They said that is especially true in domestic violence cases.

“For victims of domestic violence, the home is often not a safe haven,” Justice Mahmud Jamal and Justice Michael Moldaver wrote for the majority, endorsed by Chief Justice Richard Wagner, Justice Malcolm Rowe and Justice Nicholas Kasirer. (It was Justice Jamal’s first written ruling since he joined the court last summer.) “Instead, it is a place that shields and enables their abuse. ... In domestic violence cases, the police are not only concerned with the privacy and autonomy of the person arrested; they must also be alert to the safety of all members of the household, including both known and potential victims.”

The dissenters, led by Justice Karakatsanis, said that searches in the context of domestic violence may harm victims by deterring some from reporting assaults.

“Police searches may revictimize victims or uncover evidence of unrelated offences, which may discourage individuals from reporting. That is a particular concern in domestic violence, one of whose ‘hallmarks’ is its private nature.” Justice Karakatsanis noted that, soon after arresting Mr. Stairs, police arrested the victim herself for drug possession.

The incident began with a 911 call from a witness reporting that a male driver had repeatedly struck his female passenger. Three officers found the car at a house, ran the licence plate and discovered that Mr. Stairs was considered to have a violent background. They knocked at the door and announced themselves, but received no response. Entering without a warrant, they found a woman with fresh injuries to her face. Mr. Stairs appeared and an officer drew a gun, while another drew a taser. The suspect barricaded himself into the laundry room. The woman denied she had been struck.

Ultimately, police made the arrest. After Mr. Stairs was in handcuffs, a police officer visually scanned the basement living room. The officers did not open any cupboards or doors.

The case was a sequel, of sorts, to one of the court’s most controversial Charter rulings, the Michael Feeney case of 1997. In that case, a police officer, acting on tips, entered a trailer without a warrant and arrested the blood-spattered occupant in the beating death of 85-year-old Frank Boyle. The court threw out a conviction for second-degree murder 5-4 because the officer did not have a warrant. The majority said the officer should have used a phone to ask a judge for a warrant.

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